

1 RONALD J. TENPAS  
Assistant Attorney General  
2 Environment and Natural Resources Division  
United States Department of Justice  
3

4 ELIZABETH F. KROOP  
D.C. Bar No: 943795  
E-Mail: Elizabeth.Kroop@usdoj.gov  
5 United States Department of Justice  
Environment and Natural Resources Division  
6 Environmental Enforcement Section  
PO Box 7611  
7 Washington, DC 20044  
Telephone: (202) 514-5244  
8 Facsimile: (202) 514-5283

9 THOMAS P. O'BRIEN  
United States Attorney  
10 Central District of California

11 LEON W. WEIDMAN  
Chief, Civil Division  
12 United States Attorney  
Central District of California

13 Attorneys for the United States of America  
14

15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA  
17 WESTERN DIVISION

18 UNITED STATES OF AMERICA, )  
19 Plaintiff, ) Case No. CV08 -7124 SJO (CTx)  
20 v. ) CONSENT DECREE  
21 BIOFRIENDLY CORPORATION, )  
22 Defendant. )

23  
24 CONSENT DECREE  
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1 MICHAEL T. STOLLER  
California Bar No: 120241  
2 E-Mail: mtsapc@yahoo.com  
5747 Hoback Glen Road  
3 Hidden Hills, California 91302  
Telephone: (818) 226-4040  
4 Facsimile: (818) 226-4044

5 MICHAEL F. COLE  
6 D.C. Bar No: 462766  
E-Mail: mcole@lawbc.com  
7 LYNN BERGESON  
D.C. Bar No: 320796  
8 E-Mail: lbergeson@lawbc.com  
Bergeson & Campbell, P.C.  
9 1203 Nineteenth Street, NW  
Suite 300  
10 Washington, DC 20036  
Telephone: (202) 557-3801  
11 Facsimile: (202) 557-3836

12 Attorneys for Defendant

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1           WHEREAS, Plaintiff, the United States of America (“United States”), on  
2 behalf of the United States Environmental Protection Agency (“EPA”), has filed a  
3 Complaint in this action concurrently with this Consent Decree pursuant to Section  
4 211(d) of the Clean Air Act, as amended, 42 U.S.C. § 7545(d), against Defendant,  
5 Biofriendly Corporation (“Biofriendly”), for alleged violations of Section 211(b)  
6 of the Clean Air Act, as amended, 42 U.S.C. § 7545(b), and its implementing  
7 regulations at 40 C.F.R. Part 79, concerning fuel additives and fuels containing  
8 additives, which are manufactured, processed, sold, offered for sale, and/or  
9 introduced into commerce;

10           WHEREAS, Defendant does not admit liability to the United States arising  
11 out of the transactions or occurrences alleged in the Complaint;

12           WHEREAS, the United States and Defendant agree, and this Court by  
13 entering this Consent Decree finds, that this Consent Decree has been negotiated  
14 by the Parties in good faith, settlement of this matter will avoid litigation between  
15 the Parties, and this Consent Decree is fair, reasonable, and in the public interest;

16           THEREFORE, with the consent of the Parties, IT IS HEREBY ADJUDGED,  
17 ORDERED, AND DECREED AS FOLLOWS:

18                           I.   JURISDICTION AND VENUE

19           1.   This Court has jurisdiction over the subject matter of this action and  
20 the parties pursuant to 28 U.S.C. §§ 1331, 1345 and 1355, and Sections 205 and  
21 211 of the Clean Air Act, 42 U.S.C. §§ 7524 and 7545, and also has personal  
22 jurisdiction over Defendant. Venue lies in this District pursuant to 28 U.S.C.  
23 §§ 1391(b) and (c), and 1395(a) and pursuant to Sections 205 and 211 of the Clean  
24 Air Act, 42 U.S.C. §§ 7524 and 7545, because the violations set forth in the  
25 Complaint are alleged to have occurred in this District and Defendant’s principal  
26 place of business is located within this District.



1 III. DEFINITIONS

2 6. Unless otherwise expressly provided herein, terms used in this  
3 Consent Decree that are defined in the Clean Air Act or regulations promulgated  
4 pursuant to the Clean Air Act shall have the meanings assigned to them under that  
5 Act or such regulations. Whenever the terms set forth below are used in this  
6 Consent Decree, the following definitions shall apply:

7 "Act" shall mean the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq.

8 "Complaint" shall mean the complaint filed by the United States against  
9 Defendant in this action.

10 "Consent Decree" or "Decree" shall mean this Consent Decree.

11 "Day" shall mean a calendar day. In computing any period of time under  
12 this Consent Decree, where the last day falls on a Saturday, Sunday, or federal  
13 holiday, the period shall run until the close of business of the next business day.

14 "Defendant" shall mean Biofriendly Corporation ("Biofriendly"), a Nevada  
15 corporation, whose principal place of business is located at 1655 West Industrial  
16 Park Street, Covina, California 91722.

17 "DOJ" shall mean the United States Department of Justice and any  
18 successor departments, agencies, or instrumentalities.

19 "Effective Date" shall mean the date of entry of this Consent Decree as  
20 provided in Section XII.

21 "EPA" shall mean the United States Environmental Protection Agency and  
22 any successor departments, agencies or instrumentalities.

23 "Interest" shall mean interest at the rate specified for debts owed to  
24 departments or agencies of the United States pursuant to 28 U.S.C. § 1961.

25 "Paragraph" shall mean a portion of this Consent Decree identified by arabic  
26 numeral.

1 "Parties" shall mean the United States and Defendant.

2 "Section" shall mean a portion of this Consent Decree identified by a  
3 roman numeral.

4 "United States" means the United States of America, acting on behalf of  
5 EPA.

6 IV. CIVIL PENALTY

7 7. Defendant, Biofriendly, shall pay to the United States a civil penalty  
8 of one million two hundred and fifty thousand dollars (\$1,250,000.00) ("Settlement  
9 Amount") together with Interest in accordance with the payment provisions set  
10 forth in this Section. Payments shall be due and owing to the United States as  
11 follows:

12 (a) within thirty (30) days of the Effective Date of this Consent  
13 Decree, Defendant shall pay the sum of one hundred and twenty-five thousand  
14 dollars (\$125,000.00) together with Interest on the Settlement Amount, with such  
15 Interest accruing from the Effective Date of the Consent Decree through the date of  
16 payment;

17 (b) within one year of the date of payment set forth in subparagraph  
18 7(a), Defendant shall pay the sum of four hundred and twenty-five thousand dollars  
19 (\$425,000.00) together with Interest on the one million one hundred and twenty-  
20 five thousand dollar (\$1,125,000.00) outstanding Settlement Amount balance, with  
21 such Interest accruing from the date of the last payment through the date of  
22 payment;

23 (c) within two years after the date of payment set forth in  
24 subparagraph 7(a), Defendant shall pay the sum of seven hundred thousand dollars  
25 (\$700,000) together with Interest on the seven hundred thousand dollar (\$700,000)  
26 Settlement Amount balance, with such Interest accruing from the date of the last  
27

1 payment through the date of payment.

2 8. Payments shall be made by FedWire Electronic Funds Transfer  
3 (“EFT”) to the U.S. Department of Justice in accordance with written EFT  
4 instructions to be provided to Defendant by the Financial Litigation Unit of the  
5 U.S. Attorney’s Office for the Central District of California following the Effective  
6 Date of this Consent Decree. In accordance with Section IX (Notices and  
7 Submissions), at the time of each payment, Defendant shall send a copy to DOJ and  
8 EPA, of the EFT authorization form and the EFT transaction record, together with a  
9 transmittal letter, which shall state that payment is for the civil penalty owed  
10 pursuant to this Consent Decree. Such written notice also shall reference the DOJ  
11 case number 90-5-2-1-09094, the civil action number assigned to this case by the  
12 Court, and a statement of the calculation of the Interest on each payment.

13 9. Defendant shall not deduct any civil or stipulated penalties paid  
14 pursuant to this Section or Paragraph 11 of Section V (Interest and Stipulated  
15 Penalties) in calculating its federal income tax.

16 V. INTEREST AND STIPULATED PENALTIES

17 10. Interest on Late Payments. Should Defendant fail to make payments  
18 as required under Section IV (Civil Penalty), Paragraph 7, Interest shall continue to  
19 accrue on the unpaid balance through the date of payment.

20 11. Stipulated Penalties.

21 (a) Should Defendant fail to make a payment when due, as required  
22 under Section IV(Civil Penalty), Paragraph 7, Defendant shall be in violation of  
23 this Consent Decree and subject to stipulated penalties. In addition to Interest  
24 assessed on any late payment as set forth in Paragraph 10 of this Section,  
25 Defendant shall be subject to stipulated penalties per violation per day that such  
26 payment is late in the following amounts:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1 <sup>st</sup> through 15 <sup>th</sup> day	\$1,000
16 <sup>th</sup> through 30 <sup>th</sup> day	\$2,000
31 <sup>st</sup> day and beyond	\$3,000

Stipulated penalties shall begin accruing on the day after payment is due, and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations under this Consent Decree. Stipulated penalties shall accrue regardless of whether EPA or DOJ has notified Defendant of a violation or made a demand for payment of a violation, but need only be paid upon demand.

(b) Stipulated penalties shall be paid within thirty (30) days of the date of the demand for such penalties by EPA or DOJ. If such penalties are not paid in full within thirty days of demand, Defendant shall owe Interest on unpaid stipulated penalties from the thirtieth day (30<sup>th</sup>) day after demand through the date of payment. The payment of stipulated penalties (including accrued Interest on such stipulated penalties) shall be identified as "stipulated penalties" and reference the name and address of Defendant, DOJ case number 90-5-2-1-09094, and the civil action number assigned to this case by the Court. Stipulated penalties shall be paid to the U.S. Department of Justice in accordance with instructions provided by the Financial Litigation Unit of the U.S. Attorney's Office for the Central District of California. In accordance with Section IX (Notices and Submissions), Defendant shall provide written notice to DOJ and EPA within seven (7) days of payment of stipulated penalties, and such notice shall include a statement showing the calculation of Interest included in any such payment. Payment of stipulated penalties shall not excuse Defendant from payment as required by Section IV (Civil Penalty), Paragraph 7, or from performance of any other requirements of this

1 Consent Decree.

2 (c) The United States may, in its unreviewable discretion, reduce or  
3 waive any portion of stipulated penalties otherwise due under this Section.

4 (d) Subject to the provisions of Section VII (Effect of  
5 Settlement/Reservation of Rights), stipulated penalties provided for in this Section  
6 shall be in addition to any other rights, remedies, or sanctions available to the  
7 United States for Defendant's violation of provisions of this Consent Decree or  
8 other applicable law.

9 VI. RETENTION OF RECORDS

10 12. Until three (3) years after the Effective Date of this Consent Decree or  
11 the date upon which Defendant completes all obligations under this Consent  
12 Decree, whichever comes later, Defendant shall preserve and retain all records and  
13 documents now in its possession or control, or which come into its possession or  
14 control, that relate in any manner to the claims alleged in the underlying Complaint  
15 or to Defendant's performance of the requirements of this Consent Decree,  
16 regardless of any corporate or institutional retention policies or procedures to the  
17 contrary.

18 13. Upon request by EPA or DOJ, Defendant shall deliver any such  
19 records or documents to EPA or DOJ. Defendant may produce such documents in  
20 keeping with the confidential business information protections afforded by federal  
21 law. Defendant also may assert that certain documents, records, or other  
22 information are privileged under the attorney-client privilege or any other privilege  
23 recognized by federal law. If Defendant asserts such a privilege, it shall provide  
24 EPA and DOJ with the following information: 1) the title of the document, record,  
25 or information; 2) the date of the document, record, or information; 3) the name  
26 and title of the author of the document, record, or information; 4) the name and title

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1 of each addressee and recipient; 5) a description of the subject of the document,  
2 record, or information; and 6) the privilege asserted. However, no documents,  
3 reports, or other information created or generated pursuant to the requirements of  
4 this or any other Consent Decree with the United States shall be withheld on the  
5 grounds that they are privileged. If a claim of privilege applies only to a portion of  
6 a document, the document shall be provided to the United States in a redacted form  
7 to mask the privileged information only. Defendant shall retain all records and  
8 documents that it claims to be privileged until the United States has had a  
9 reasonable opportunity to dispute the privilege claim before this Court and any  
10 such dispute has been resolved in Defendant's favor.

11 VII. EFFECT OF SETTLEMENT/ RESERVATION OF RIGHTS

12 14. Defendant's complete performance of all obligations under this  
13 Consent Decree shall resolve its civil liability for the violations alleged in the  
14 underlying Complaint through the date of lodging of this Consent Decree.

15 15. In the event Defendant does not completely perform all obligations  
16 under this Consent Decree, the United States reserves all legal and equitable  
17 remedies available to enforce the provisions of this Consent Decree and reserves  
18 the right to institute proceedings in this action or in a new action with respect to  
19 claims set forth in the Complaint. This Consent Decree shall not be construed to  
20 limit the rights of the United States to obtain penalties or injunctive relief under the  
21 Clean Air Act or its implementing regulations, or seek relief under any other  
22 federal laws, regulations, or permits, except as expressly specified in Paragraph 14.

23 16. This Consent Decree does not alter or relieve Defendant of the  
24 responsibility to comply with the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, or any  
25 other federal, state, or local laws, regulations, or permit conditions. Defendant is  
26 responsible for achieving and maintaining complete compliance with all applicable  
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1 federal, state, and local laws, regulations, and permits. Compliance with this  
2 Consent Decree shall not be a defense to any action commenced pursuant to such  
3 laws or regulations, except as provided in Paragraph 14.

4 VIII. COSTS

5 17. The Parties shall bear their own costs of this action, including  
6 attorneys' fees, except that the United States shall be entitled to collect the costs  
7 (including attorneys' fees) incurred in any action to enforce this Consent Decree  
8 and/or to collect any portion of the civil penalty, Interest, or stipulated penalties  
9 due but not paid by Defendant.

10 IX. NOTICES AND SUBMISSIONS

11 18. Unless otherwise specified herein, whenever notifications,  
12 submissions, or communications are required pursuant to this Consent Decree, they  
13 shall be provided in writing and addressed as follows:

14 As to the United States:

15 For the Department of Justice:

16 Chief, Environmental Enforcement Section  
17 Environment and Natural Resources Division  
18 U.S. Department of Justice  
19 Re: DOJ # 90-5-2-1-09094 (Att: Elizabeth F. Kroop, Esq.)  
20 Box 7611, Ben Franklin Station  
21 Washington, D.C. 20044-7611

22 For the Environmental Protection Agency:

23 Director  
24 Air Enforcement Division (2242A)  
25 U.S. Environmental Protection Agency  
26 1200 Pennsylvania Avenue, N.W.  
27 Washington, DC 20460

28 Marcia S. Ginley, Attorney  
U.S. Environmental Protection Agency  
OECA/AED/Western Field Office (8MSU)  
1595 Wynkoop Street  
Denver, CO 80202







1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Biofriendly Corporation:

3  
4 FOR THE UNITED STATES OF AMERICA:

5  
6  
7 Date: 10/24/08

8 RONALD J. TENPAS  
9 Assistant Attorney General  
10 Environment and Natural Resources Division  
11 United States Department of Justice

12 Date: 10/21/08

13 ELIZABETH F. KROOP  
14 Trial Attorney  
15 United States Department of Justice  
16 Environment & Natural Resources Division  
17 Environmental Enforcement Section  
18 P.O. Box 7611  
19 Ben Franklin Station  
20 Washington, DC 20044-7611  
21 Telephone: (202)-514-5244  
22 Facsimile: (202)-514-2583  
23  
24  
25  
26  
27  
28

1 Date: 9/30/08

~~GRANTA Y. NAKAYAMA~~  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U. S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

6 Date: 9-29-08

WALKER B. SMITH  
Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

11 Date: 9-26-08

ADAM M. KUSHNER  
Director, Air Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

15 Date: 9-26-08

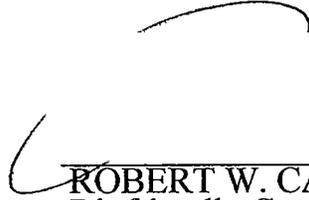
MARCIA S. GINLEY  
Attorney, Air Enforcement Division  
United States Environmental Protection Agency  
OECA/AED/Western Field Office (8MSU)  
1595 Wynkoop Street  
Denver, CO 80202

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
of United States v. Biofriendly Corporation:

FOR BIOFRIENDLY CORPORATION:

Date: 9/12/08

  
\_\_\_\_\_  
ROBERT W. CARROLL  
Biofriendly Corporation  
1665 West Industrial Park Street  
Covina, CA 91722  
Telephone: (629)-859-5000  
Facsimile: (629)-915-1454  
E-Mail: [Bob.W.Carroll@Biofriendly.com](mailto:Bob.W.Carroll@Biofriendly.com)

Date: 9-12-08

  
\_\_\_\_\_  
MICHAEL T. STOLLER  
5747 Hoback Glen Road  
Hidden Hills, California 91302  
Telephone: (818) 226-4040  
Facsimile: (818) 226-4044

Agent Authorized to Accept Service  
on Behalf of Above Party